

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE TESLA INC. STOCKHOLDER  
DERIVATIVE LITIGATION

Lead Case No.: 1:22-cv-00592-DAE

(Consolidated with Case No. 1:22-cv-  
00611-DAE)

This Document Relates To:

All Cases

**DECLARATION OF GARY EWELL IN SUPPORT OF DEFENDANTS' REPLY IN  
FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'  
AMENDED CONSOLIDATED COMPLAINT**

I, Gary Ewell, declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of Texas and an attorney with the law firm of Ewell, Brown, Blanke & Knight LLP. I am one of the attorneys representing Defendant Elon Musk and Nominal Defendant Tesla, Inc. ("Tesla," collectively with Elon Musk, the "Defendants") in the above-captioned matter. I have personal knowledge of the matters stated herein. If called as a witness I could and would competently testify to the matters stated herein. Defendants submit this declaration in support of Defendants' Reply in Further Support of Defendants' Motion to Dismiss Plaintiffs' Amended Consolidated Complaint.

2. Defendants respectfully request that the Court consider the below referenced document, which is the proper subject of judicial notice pursuant to Federal Rule of Evidence ("FRE") 201.

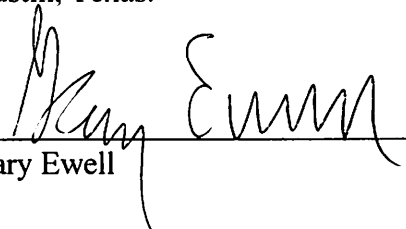
**Judicially Noticeable Document**

3. The Court may properly take judicial notice of public records, including U.S. Securities and Exchange Commission (“SEC”) filings. *See Petrobras Am., Inc. v. Samsung Heavy Indus. Co.*, 2020 U.S. Dist. LEXIS 265304, at \*8–10 n.3, 4 (S.D. Tex. June 19, 2020) (taking judicial notice of SEC filings and news articles pursuant to FRE 201(b)); *United States v. Tenet Healthcare Corp.*, 481 F. Supp. 2d 673, 679-81 (W.D. Tex. 2006) (same; “[c]ourts have the power to take judicial notice of the coverage ... of newspaper and magazine articles” and SEC filings). Accordingly, Defendants request that the Court consider the following document:

- a. Attached hereto as Exhibit 1 is a true and correct copy of Tesla’s “Q4 and FY 2023 Update,” filed as Exhibit 99.1 to Tesla’s Form 8-K, which was publicly filed with the SEC on January 24, 2024.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 21st day of March, 2024 in Austin, Texas.

  
\_\_\_\_\_  
Gary Ewell